

TEAM CODE: Z

5TH NLIU Justice R.K Tankha Memorial Moot Court Competition

IN THE HON'BLE HIGH COURT OF NIRDHAN

Writ Petition (Civil) No. 999 / 2015
Clubbed with
Writ Petition (Civil) No. 1021 / 2015

(Filed under Article 226 of the Constitution of India, 1950)

People's Union for Liberties & Democratic Reforms and JCI Petitioners

versus

Republic of Gariba and Maxis Bank Respondents

Written Submissions on behalf of the Respondents,

Counsel for the Respondents.

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WRITTEN SUBMISSIONS FOR THE RESPONDENTS

STATEMENT OF JURISDICTION

The Petitioners has approached the Hon'ble High Court of Nirdhan under Art. 226 of the Constitution of India, 1950.

STATEMENT OF FACTS

1. The Governor of Nirdhan, which is the biggest state in the Republic of Gariba, in order to fast pace the development devised a new scheme where roads were to be constructed by private parties. Jeopardy Contracts Inc. (JCI) entered into agreement with Jodhpur Goan Panchayat Samiti (JGPS) to construct 115 km road on 21.9.2011. The contract was terminated by JGPS on 21.9.2013.
2. JCI sent a legal notice on 11.12.2014 invoking the arbitration clause and for claiming the termination payment. JGPS replied on 12.12.2014 informing that the matter would not be considered under the Arbitration and Conciliation Act, 1996. They also invoked the performance bank guarantee. JCI filed an urgent civil writ in the High Court of Nirdhan, which directed the arbitration to be conducted by Council for Infrastructure Arbitration (CIA).
3. The arbitral award pronounced on 21.1.2015 was in favour of JCI. JGPS immediately filed a Sec.34 petition before the High Court of Nirdhan. The petitioners have challenged the constitutional validity of Sec.34 of the Arbitration and Conciliation Act, 1996.
4. Meanwhile, the Governor had promulgated an ordinance on 20.12.2014 which came into effect from 24.12.2014 which amended the Panchayati Raj Act, 1994. The ordinance incorporated academic qualifications for candidates to contest in Panchayat elections.
5. People's Union for Liberties & Democratic Reforms issued a public statement against the ordinance. Urgent listing was denied for the said matter in the High Court of Nirdhan. On 31.12.2014 the petitioner approached the Supreme Court under Art.32.
6. The Supreme Court directed the High Court of Nirdhan to hear the proceedings. The petitioner challenges the constitutionality of the ordinance.

STATEMENT OF ISSUES

1. Whether Section 34 of the Arbitration and Conciliation Act, 1996 is unconstitutional?
2. Whether the ordinance promulgated by the Governor of Nirdhan is ultra vires Constitution of India?
3. Whether the procedure followed by the courts during holidays and when not in session is unconstitutional?

SUMMARY OF ARGUMENTS

1. The respondents humbly submit that Section 34 of the Arbitration and Conciliation Act, 1996 is constitutional. The argument is based on three-folds. *Firstly*, judicial intervention in arbitral process is warranted. *Secondly*, the pendency of the petition is not in violation of fundamental rights and treaty obligations. And *finally*, the grant of automatic stay is not per se bad in law.
2. The ordinance promulgated by the Governor of Nirdhan is not ultra vires. This is because *firstly*, the ordinance is in consonance with Part IX of the Constitution. And *secondly*, the ordinance does not marginalize women and weaker sections of the society.
3. The third and final contention of the respondents is that the procedure followed by the court during the holidays is constitutionally valid. The argument is proved by substantiating that, *firstly*, since there is a notified vacation bench and procedure for listing is available. *Secondly*, non-grant of listing of the case before the issuance of the election notification does affect the merits of the case.

ARGUMENTS ADVANCED

I. SECTION 34 OF THE ARBITRATION AND CONCILIATION ACT IS CONSTITUTIONAL.

An arbitration award can be set aside only on the grounds mentioned in Section 34 of the Arbitration and Conciliation Act, 1996 (herein after referred to as the “Act”). The purpose of setting aside is to modify in some way the award in part or wholly.¹

The Council for Infrastructure Arbitration (CIA) after conducting the arbitral proceedings came out with an award in favour of Jeopardy Contracts Inc (**JCi**) on 21-1-2015 which entitled them to the money under the performance bank guarantee. Jodhpur Gaon Panchayat Samiti (**JGPS**), the respondent filed a petition under Section 34 of the Act on 25-1-2015.

The petitioner **JCi**, has challenged the constitutional validity of section 34 of the Act. It is a humble submission from the part of the respondent **JGPS** that section 34 is constitutionally valid since, the judicial intervention is warranted[A], the pendency of the petition is not in violation of the fundamental rights and bilateral commitments[B] and the grant of automatic stay is not *per se* bad in law[C].

A. Judicial intervention is warranted under the Act.

The Respondent submits that the judicial intervention enunciated under Section 34 of the Act is enacted to prevent patent illegalities (i) and the intervention is in consonance with the UNCITRAL Model Law. (ii)

¹ A. Redfern & M.Hunter, Law & Practice of International Commercial Arbitration (London: Sweet & Maxwell, 2004) at 404

i. The intervention is permitted to prevent patent illegality.

Section 34 of the Act imposes a supervisory role on courts, for the review of the arbitral award to ensure fairness”.² Thus the Court not only has the power but also has a duty to quash an order which is patently illegal.³

The ground for judicial interference was elucidated by the Supreme Court in the case of *ONGC v. Saw Pipes*.⁴ The Court had enunciated that:

“If the award is contrary to the substantive provisions of law or the provisions of the Act or against the terms of the contract, it could be patently illegal, which could be interfered under Section 34. However, such failure of procedure should be patent affecting the rights of the parties.”

The interference in the award based on an erroneous finding of fact is permissible and similarly, if an award is based by applying a principle of law which is patently erroneous, and but for such erroneous application of legal principle, the award could not have been made, such award is liable to be set aside.⁵

Thus it is submitted that Section 34 of the Act allows the court to nip any illegality being committed by the Arbitral Tribunal⁶ and to prevent patent illegalities arising thereof.

ii. The intervention is in consonance with the UNCITRAL Model Law.

It is a well settled position of law that the absence of any remedy provided by the statute should not frustrate the demands of justice and it is the duty of the court to devise procedures by drawing analogy from other systems of law and practice.⁷ The legislative intent underlying

² *McDermott International Inc. v. Burn Standards Co. Ltd* (2006) 11 SCC 181

³ *Kiran Singh v. Chaman Paswar* AIR 1954 SC 340

⁴ (2003) 5 SCC 705

⁵ *Arosan Enterprises Ltd. v. Union of India* 1999 (9) SCC 449

⁶ *Alcove Industries Ltd. v. Oriental Structural Engineer’s Ltd.* (2008) 1 ARBLR 393 (Delhi)

⁷ *Des Raj & Sons v. Union of India* 1984 ArbLR 156 see also: *Krishna Gopal Prasad v.*

Chandiprasad Duryandhanprasad AIR 1953 Nag 309 (DB)

the Arbitration and Conciliation Act is to minimise the supervisory role of the courts in the arbitral process.⁸ The Act has been identified by the Courts as a long leap in the direction of an Alternate Dispute Resolution based on the UNCITRAL Model.⁹

The Apex Court in *Gas Authority of India Ltd v. Ketu Construction (I) Ltd*¹⁰, while deliberating upon the correlation of the Act with the Model Law had observed that:

“The Preamble of the Act makes it amply clear that Parliament has enacted the Act almost on the same lines as the Model Law, which was drafted by the United Nations Commission on International Trade Law. The Provisions of the Act should be interpreted keeping in mind the Model Law, as the concept under the present Act has undergone a complete change. It will, therefore, be useful to take note of the corresponding provisions of the UNCITRAL Model Law.”

Article 34 of the Model Law permits the intervention by Court, on application by a party, for setting aside the arbitral award.¹¹ Thus it is submitted that Section 34 of the Act is in accordance with Article 34 of the Model Law and thus valid.

B. The pendency of the petition does not violate fundamental rights and bilateral commitments.

The petitioners have challenged the constitutional validity of Section 34 alleging that the pendency of the petition violates the fundamental rights enshrined under part III of the Constitution. Further allegations suggest that it breaches the bilateral and multilateral investment treaty obligations. The respondents differ from the said view on the grounds that,

⁸ Food Corporation of India v. Indian Council of Arbitration (2003) 9 SCC 564

⁹ Firm Ashok Traders v. Gurmukh Das Saluja (2004) 3 SCC 155

¹⁰ (2007) 5 SCC 38

¹¹ See Article 34(1). Article 34(1) states that “Recourse to a court against an arbitral award may be made only by an application for setting aside in accordance with paragraphs (2) and (3) of this Article.”

reasonable restrictions can be imposed on the said rights (i) and that it does not disturb bilateral treaty obligations (ii).

i. The Right to speedy trial is not absolute.

The right to speedy trial though not specifically enumerated as a fundamental right, the court had interpreted it to be implicit in the broad sweep and content of Article 21.¹² Right to speedy trial encompasses all stages of trial, namely, investigation, enquiry, trial, appeal and revision.¹³

While the anxiety to bring the trial to its earliest conclusion has to be shared it is fundamental that in the process none of the well entrenched principles of law that has been laboriously built by illuminating judicial precedents is sacrificed or compromised.¹⁴

The Supreme Court in the case of *Devendra Pal Singh Bhullar v. State of N.C.T. of Delhi*¹⁵ held that:

“Article 21 ... provides that no person shall be deprived of his life except according to procedure established by law. The implication is very clear. Deprivation of life is constitutionally permissible if that is done according to procedure established by law.”

But the procedure followed should be just, fair and reasonable.¹⁶

In *Olga Tellis*, the Supreme Court has again emphasized that *“the procedure prescribed by law for the deprivation of the right conferred by Art.21 must be fair, just and reasonable”*.¹⁷

In the present case, the restriction was brought about by a procedure established by law followed in a just, fair and reasonable manner.

¹² *Momses Wilson v. Karluriba* AIR 2008 SC 379

¹³ *Diwan Naubat Rai and others v. State through Delhi Administration* AIR 1989 SC 542

¹⁴ *V.K.Sasikala v. State* AIR 2013 SC 613

¹⁵ AIR 2013 SC 1975

¹⁶ *Maneka Gandhi v. Union of India* AIR 1978 SC 597

¹⁷ *Olga Tellis v. Bombay Municipal Corp* AIR 1986 SC 180

ii. Does not disturb treaty obligations.

The actual length of time is not specified in any instrument and must be judged on a case-by-case basis taking into account factors such as the complexity of the case and the diligence of the authorities.¹⁸ The International Covenant on Civil and Political Rights recognizes and protects a right to justice and fair trial.¹⁹ The proceedings subject to the requirement of fair and speedy trial are those from the time of the charge to the final trial on the merits, including appeal.²⁰

The International conventions and treaties which entitle the right to speedy and fair trial also empower its members to go in for an appeal. And the delay caused thus would not be in violation of the treaty commitments.

C. The grant of automatic stay is not *per se* bad in law.

The petitioners have contended that the automatic stay on admission of Section 34 petition as per the Act is *per se* bad in law. It is a humble submission on part of the respondents that, automatic stay does not come under the ambit of injunction (i) in arguendo, the procedure has been followed (ii).

i. The automatic stay does not come under the ambit of injunction.

Black's Law Dictionary defines the term injunction as " *a court order commanding or preventing an action*".²¹ It is a court order by which an individual is required to perform, or is restrained from performing, a particular act.²²

¹⁸ See European Court of Human Rights, Wemhoff case, Matznetter v. Austria, Stögmüller case, König v. Germany, Letellier v. France, Kemmache v. France, Tomasi v. France, Olsson v. Sweden and Scopelliti v. Italy; Inter-American Commission on Human Rights, Case 11.245 (Argentina)

¹⁹ See Article 14 of the ICCPR

²⁰ See UN Human Rights Committee, General Comment No. 13

²¹ Bryan A. Garner, Black's Law Dictionary, Seventh Edition, 1999

²² <http://legal-dictionary.thefreedictionary.com/injunction>

The division bench in the case of *P.Anand Gajapathi Raju & Ors v. P.V.G. Raju(Dead) & Ors*²³ clarified that challenging an arbitral award is a continuation of the process. It unequivocally held that:

“There is no question of stay of the proceedings till the arbitration proceedings conclude and the award becomes final in terms of the provisions of the new Act. All the rights, obligations and the remedies of the parties would now be governed by the new Act including the right to challenge the award.”

The High Court of Nirdhan has not issued any kind of injunction order subsequent to the admission of the petition. The automatic stay is only a continuation of the arbitral process as carrying out the award during pendency of the appeal would not serve the purpose of the challenge.

ii. The procedure for grant of injunction has been followed.

Grant of temporary injunction is governed by three basic principles, i.e. prima facie case, balance of convenience and irreparable injury, which are required to be considered, but it may not be appropriate for any Court to hold a mini trial at the stage of grant of temporary injunction.²⁴ Grant of an injunction is an equitable relief.²⁵

The Court while granting or refusing to grant injunction should exercise sound judicial discretion to find the amount of substantial mischief or injury which is likely to be caused to the parties, if the injunction is refused and compare it with that it is likely to be caused to the other side if the injunction is granted.²⁶

The petition was admitted taking into consideration the principles for automatic stay. The prima facie facts were considered since an adjudication process before was not feasible. Balance of convenience for both the parties and the irreparable injury was also taken into

²³ (2000) 4 SCC 539

²⁴ S. M. Dyechem Ltd. v. M/s. Cadbury (India) Ltd., AIR 2000 SC 2114

²⁵ Mandali Ranganna v. T.Ramachandra AIR 2008 SC 2291

²⁶ Dalpat Kumar and Another v. Prahlad Singh and Others AIR 1993 SC 276

contemplation. Because if the automatic stay was not effected then the petitioners would have enforced the arbitral award and the challenge there after would have been impractical.

Thus, it is a humble submission on behalf of the respondents that Section 34 of the Arbitration and Conciliation Act 1996 is constitutionally valid. The above statement has been proved since, the judicial intervention is warranted, delay is not violative of fundamental rights and moreover the automatic stay is not per se bad in law.

II.

The ordinance is not

ultra vires.

The ordinance promulgated by the Governor of Nirdhan prescribing academic qualification for contesting in panchayat elections is not ultra vires, since, it is not ultra vires to part IX of the Constitution and is non-retroactive.[A] Furthermore, the ordinance does not marginalize women and weaker sections of the society.[B]

A. The ordinance is not ultra vires to part IX of the Indian constitution and is not retroactive

The satisfaction of the Governor in issuing an ordinance under Art. 213 of the Constitution is not subject to judicial review. A disqualification criteria prescribed under Article 243F (1)(b)²⁷, which states that: *A person shall be disqualified for being chosen as, and for being, a member of a panchayat - if he is disqualified by or under any law made by the legislature of the state.*

A Constitution Bench of the Apex Court in the case of A. K. Roy v. Union of India²⁸ had observed that:

²⁷ Indian Constitutional Law, M.P.Jain, 7th edition, 2014

²⁸ AIR 1982 SC 710, see also; T. Venkata Reddy and Others v. State of Andhra Pradesh, 1985 (3) SCC 198, Nagaraj and others v. State of Andhra Pradesh, air 1985 SC 551

"... It is trite that an ordinance promulgated by the President or the Governor has the same force and effect as an Act of Parliament or Act of State Legislature, as the case may be. Art.367 (2) and Art.213 (2) of the Constitution make it abundantly clear that an ordinance operates in the field it occupies with the same rigor as an Act. An ordinance issued by the President or the Governor is as much a law as an Act passed by the Parliament and is, fortunately and unquestionably, subject to the same inhibitions. In those inhibitions lies the safety of the people."

The right to contest the election is not a fundamental right. It is a statutory right, for which qualifications and disqualifications can be prescribed by the Legislature.²⁹The reasonableness is to be judged with reference to the object of the legislation and not moral considerations.³⁰

This ordinance have been promulgated for ensuring that those who have to lead, must lead by example and for ensuring that any further delay in making educational qualification mandatory at the grass root level of the democracy. Moreover the ordinance does not exclude but operates to include qualified persons. It is merely an election reform with the object to improve the working of the Panchayati Raj Institution.

In the case of *Javed and Others v. State of Haryana and Others*³¹, an ordinance was challenged which laid down the disqualification for those, who have more than two children in the State of Haryana, to contest the election for the Panchayati Raj Institution, where in the Apex Court held that:

"...the two child norm is not discriminatory and the disqualification was not found to be violative of Article 14 and 21 of the Constitution."

The apex court also up held the ordinance in the view of National Interest.

²⁹ State of Punjab v. Satya Pal, AIR 1969 SC 903

³⁰ Suraj Mall v. Vishwanath, AIR 1953 SC 545

³¹ (2003) 8 SCC 31

Further more in the case of *Jodhpur Chartered Accountants Society and Another v. State of Rajasthan and Another*³² the court held that: “*the court do not have powers to stay the operation of the law, and a judgment of the Supreme Court.*”The Supreme Court advocated judicial restraint, unless the law or provision is manifestly unjust or glaringly unconstitutional.³³

The principle that the Courts should not interfere with the process of election, has been laid down in the case of *N.P Ponnuswami v. Returning Officer, Namakwa Constituency and Others*.³⁴The restriction reflected under article 329(b), has also been incorporated in Part IX of the Constitution, inserted vide 73rd Amendment in Article 243-O of the Constitution³⁵, which reads as follows:

“243-O.Bar to interference by courts in electoral matters.-Notwithstanding anything in this Constitution-
(b) no election to any Panchayat shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State.”

In the case of *Election Commission of India v. Ashok Kumar and other*³⁶ the Hon’ble Supreme court held that:

“ If an election is to be called in question and which questioning may have the effect of interrupting, obstructing or protracting the election proceedings in any

³² 2001(2)WLC(Raj.)17 para 36

³³ Bhavesh D. Parish and Other v. Union of India and Another, (2000)5 SCC 471,para 30

³⁴ AIR 1952 SC 64

³⁵ Supra n 27

³⁶ AIR 2000 SC 729 See also S.T. Muthuswami v. K. Natarajan and Others AIR 1988 SC 616

matter, the invoking of judicial remedy has to be postponed till the completing of proceedings of elections.”

B. The ordinance does not marginalize weaker societies.

Article 46 of the constitution mandates the state “to promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the scheduled castes and scheduled tribes, and shall protect them from social injustice and all forms of exploitation.³⁷In the same case the apex court also confirmed that welfare is actually a form of liberty in as much as it liberates men from social conditions which narrow their choices and brighten their self development.

The state’s discretion to make laws for the people for their own development is said and justified in the case of *Srimathi Champakam Dorairajan v.The State of Madras*³⁸, where the court said that:

“ Under article 46 of the constitution, the state is bound to promote with special care the educational interests of the weaker sections of the people & protect them from the social injustice and all forms of exploitations and that the state has the sole discretion to decide who are weaker sections of the people.”

The discrimination made would not be in violation of the fundamental rights of a person as the state has applied and relied upon part IV of the constitution, ie; Directive principles in making this law. The provisions of Part IV shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.³⁹

³⁷ Murlidhar Dayandeo Kesekar v. Vishwanath Pandu Barde & Anr. (1995) SCC suppl (2) 549

³⁸ AIR 1959 MAD 120

³⁹ B. Krishna Bhat v. Union of India and Ors (1990) 3 SCC 65

Article 14 does not insist that legislative classification should be scientifically perfect or logically complete. The difference which will warrant a reasonable classification need not be great. What is required is that it must be real and substantial and must bear some just and reasonable relation to object of legislation.⁴⁰

In the case of *Ameroonissa v. Mahboob*⁴¹ the Apex Court held that:

“When a law is challenged as denying equal protection, the question for determination by the court is not whether it has resulted in inequality but whether there is some difference which bears a just and reasonable relation to the object of legislation. Principle of equity doesn’t mean that every law must have universal application for all.

Every classification is in some degree likely to produce some inequality and mere production of inequality is not good enough, It is assumed and should be taken that the legislature understands and correctly appreciates the need of its own people that its laws are directed to problems made manifest by experience and its discriminations are made on adequate grounds.”

In the instant case, 19(s)⁴² of the said ordinance has made special reservation for the weaker section of the society which can be understood by mere reading of the statement of facts. The Governor had passed the ordinance in a way to enact the directive principles. The academic qualifications prescribed were in no way prepared to marginalize the weaker sections of the society and women in totality.

III. The procedures followed by the court during the holidays is not unconstitutional.

⁴⁰ Kedar Nath v. State of West Bengal, (1954) SCR 340, see also; Chiranjit Lal v. Union of India (1950) SCR 8169, Prabhu Das v. Union of India AIR 1966 SC 1044.”

⁴¹ (1953) SCR 404

⁴² Statement of facts, Para 16

The procedure followed by the court during the holidays is not unconstitutional. It is because, the notified vacation bench and procedure for listing is available during holidays [A] and non-grant of listing does not affect the merits of the case [B].

A. Notified vacation bench and procedure for listing is available during any holiday or when the court is not in session.

It is evident from the statement of facts that there was a notified vacation bench and procedure for listing during the winter vacation. There is a prescribed procedure of the court which is available during any holiday, is prescribed under The Supreme Court Rules, 1966⁴³.

The procedure is as follows:

*Except on the days which are holidays both for the Court and the offices of the Court, the offices of the Court shall be open during summer vacation and Christmas and New Year holidays of the Court at such times as the Chief Justice may direct.*⁴⁴

The Chief Justice may appoint one or more Judges to hear during summer vacation or winter holidays all matters of an urgent nature which under these rules may be heard by a Judge sitting singly, and, whenever necessary, he may likewise appoint a Division Court for the hearing of urgent cases during the vacation which require to be heard by a Bench of Judges.⁴⁵

It is the discretion of the Court to decide upon the urgency of the matter, which is to be listed during any vacation. The procedure of the Court for the listing of a case is prescribed below:

“(iv) Dates In Adjudged Matters: If Admission Matter is adjudged by the Court; it is listed further through computer in terms of the directions given by the Court in this regard and keeping the overall ceiling of total matters to be listed before

⁴³ Supreme Court of India, Practice and Procedure

⁴⁴ Subs. by G.S.R. 1857, dated 20th October, 1970 (w.e.f. 31-10-1970)

⁴⁵ Published in the Gazette of India, Extra. Dated 15th January, 1966.

the Bench, in view. For this purpose a computer programme has been prepared in consultation with NIC and dates are given by the computer in terms of that programme, thereby eliminating manual intervention. The computer gives date in the following order of priority: a. Specific date matters b. Matters which are adjourned for a particular period viz 1/2/4 weeks. c. Matters directed to be listed in a particular month. d. Notice matters where a returnable date is given by the Registry. e. Matters directed to be listed after a particular period viz 1/2/4 weeks. f. The matters which are simply adjourned without any direction as regards the next date of hearing/the matters in which date is given by the Registry.⁴⁶”

Considering that these procedures of the Courts are well established, even the accusation of Non-availability of a procedure of the Court can be held contempt of Court.”Hence it could be conclusively held that notified vacation bench and procedure for listing is available during any holiday or when the court is not in session.

B. Non-grant of listing before the issuance of election notification does not affect the merits of the case.

In the case of *Food Corporation Of India & Anr v. M/S. Seil Ltd. & Ors*⁴⁷, the apex court held that:

“A clear error or omission on the part of the court to consider a justifiable claim on its part would be subject to review; amongst others on the principle of actus curiae neminem gravabit.”

The legal maxim “*actus curiae neminem gravabit*” is not applicable in the instant case as there has not been any clear error or omission on the part of the court.

⁴⁶ Supra n 40

⁴⁷ AIR 2004 Ker 137, page 39

In *Youraj Singh And ors v. Chander Bahadur Karki*⁴⁸, the Apex court held that:

“...And the procedure that was to be taken should have been according to the procedures that should have been prescribed in, ie. An election petition calling in question any election may be presented on one or more of the grounds specified in sub-Section (1) of Section 100 and Section 101 to the High Court by any candidate at such election or any elector within forty five days from but not earlier than the date of election of the returned candidate or, if there are more than one returned candidate at the election and the dates of their election are different, the latter of those two days.”

A general principle is that a prayer dealing with different alternatives of government policies cannot be dealt with by the court, as long as the government explains the reasoning behind the policy with rationality and objectivity. Only if the court is able to point out a constitutional flaw, say in the form of violation of essence and core of fundamental rights, it may adjudicate on the issue.⁴⁹

Writ jurisdiction under art.226 of the constitution is not to be exercised in matters relating to election disputes.⁵⁰ The procedure adopted by the petitioners in the case at hand is wrong. They have approached the High Court with a writ petition, but should have filed an election petition. Therefore it is the humble submission that Non-grant of listing before the issuance of election notification does not affect the merits of the case.

⁴⁸ *Youraj Singh And ors v. Chander Bahadur Karki*, (2007) 1 SCC 770

⁴⁹ *Manushi Sangathan v. Govt. of Delhi*, (2010)168 DLT 168.

⁵⁰ *Harnek Singh v. Chiranjith Singh* AIR 2006 SC 52;(2005) 8 SCC 383.

PRAYER

In the light of issues raised, arguments advanced and authorities cited, the respondents humbly pray that this Hon'ble High Court may kindly adjudge and declare that:

- A. The Section 34 of the Arbitration and Conciliation Act, 1996 is constitutional.
- B. The ordinance promulgated by the Governor of Nirdhan is not ultra vires.
- C. The procedure followed by the Court during holidays and when not in session is not unconstitutional.

Or may kindly pass any other order that this Hon'ble High Court may deem fit. For this act of kindness the respondents shall in duty bound forever pray.

Respectfully submits

Sd/-

Counsel for Respondents